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IN THE  
**Supreme Court of the United States**  
October Term, 1983

HARRY GLEIXNER,  
*Petitioner,*  
*against*

THE PEOPLE OF THE STATE OF NEW YORK,  
*Respondent.*

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**OPPOSITION TO PETITION FOR WRIT OF  
CERTIORARI TO THE APPELLATE DIVISION,  
SECOND DEPARTMENT OF THE SUPREME  
COURT OF THE STATE OF NEW YORK**

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JOHN J. SANTUCCI  
*District Attorney*  
*Queens County*  
*Attorney for Respondent*  
125-01 Queens Boulevard  
Kew Gardens, N. Y. 11415  
(212) 520-5560

MALVINA NATHANSON  
ANNETTE COHEN  
*Assistant District Attorneys*  
*Of Counsel*

### **Question Presented**

Was the petitioner's confession, prompted solely and instantaneously by a simple ruse after he had waived his *Miranda* rights, voluntary, and not elicited in violation of his due process rights?



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No. 83-1951

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**Statement of the Case**

After having waived his *Miranda* rights, the defendant admitted that he had committed the crime of sodomy. The confession was blurted out after one detective, as a ruse, and within the hearing of the petitioner, said to another detective, "I think we might have a match on the fingertip," while ostensibly comparing the petitioner's fingerprints with those on a dollar bill given by the petitioner to the victim.

The court below, after a hearing, held the petitioner's confession to be admissible (see Petitioner's Appendix B). After a jury trial, at which the confession was admitted, the petitioner was convicted of two counts of sodomy in the first degree [Penal Law §130.50] and one count of endangering the welfare of a child [Penal Law §260.10]. The Appellate Division, Second Department of the Supreme Court of the State of New York, affirmed the conviction while modifying the sentence (see Petitioner's Appendix C).

## A R G U M E N T

### **The Petitioner's Confession, Prompted Solely and Instantaneously by a Simple Ruse, After He Had Waived His *Miranda* Rights, Was Voluntary and Not Elicited in Violation of His Due Process Rights.**

This Court has held that police deception in and of itself does not render a confession involuntary. Rather, such deception should be considered under a "totality of circumstances" test to determine whether the accused's will was overborne to the point where it can be said that his confession was coerced. In such event, the confession would be deemed to have been extracted in violation of his due process rights. *Rogers v. Richmond*, 365 U.S. 534, 544 (1961). An assessment of the totality of the circumstances requires an evaluation of the type and duration of the questioning, *Haynes v. Washington*, 373 U.S. 503 (1963); the defendant's age, *Haley v. Ohio*, 332 U.S. 596 (1947); the defendant's mental competency, *Blackburn v. Alabama*, 361 U.S. 199 (1961); the police practices, *Brown v. Mississippi*, 297 U.S. 278 (1936); and the defendant's mental state,

*Townsend v. Sain*, 372 U.S. 293 (1963). Under the facts of this case, other than the police trick, none of the above-enumerated factors are claimed to have been elements which evoked the petitioner's confession.

The petitioner, in urging that the trick alone renders the confession inadmissible, argues that the "totality of circumstances" test "has its foundation in case law of a bygone era when concepts of *Miranda* rights and procedural safeguards in the criminal law were unheard of" (see Petition, p. 10). That is arguable, but, even if true, is irrelevant, since this Court has continued to endorse that test and the holding in *Rogers v. Richmond*, *supra*, after *Miranda*. For example in *United States v. Washington*, 431 U.S. 181, 187, 188 (1977), this Court, in affirming the "totality" test, wrote that "[t]he Constitution does not prohibit every element which influences a criminal to make incriminating admissions. The Court went on to say that, "absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions."

In the case at bar, the simple police technique used which prompted the confession after the defendant had waived his *Miranda* rights did not rise to the level of coercion which would render the confession involuntary. A single statement only was made, it was not even directed to petitioner, it raised only a possibility of the existence of incriminating evidence, and it was made early in an interrogation which contained no coercive aspects. This is not the stuff of which due process violations are made.



**Conclusion**

**The Petition for a Writ of Certiorari Should Be Denied.**

Respectfully submitted,

JOHN J. SANTUCCI  
*District Attorney*  
Queens County

MALVINA NATHANSON  
ANNETTE COHEN  
Assistant District Attorneys  
*Of Counsel*